

SECOND REGULAR SESSION

SENATE BILL NO. 1088

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR ENGLER.

Read 1st time February 22, 2006, and ordered printed.

TERRY L. SPIELER, Secretary.

5229S.01I

AN ACT

To repeal sections 168.114, 168.116, 168.118, and 168.120, RSMo, and to enact in lieu thereof five new sections relating to public school teachers.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 168.114, 168.116, 168.118, and 168.120, RSMo, are
2 repealed and five new sections enacted in lieu thereof, to be known as sections
3 168.114, 168.116, 168.117, 168.118, and 168.120, to read as follows:

168.114. 1. An indefinite contract with a permanent teacher shall not be
2 terminated by the board of education of a school district except for one or more
3 of the following causes:

4 (1) Physical or mental condition [unfitting him] **making such teacher**
5 **unfit** to instruct or associate with children;

6 (2) Immoral conduct;

7 (3) Incompetency, inefficiency or insubordination in line of duty;

8 (4) Willful or persistent violation of, or failure to obey, the school laws of
9 the state or the published regulations of the board of education of the school
10 district employing [him] **such teacher**;

11 (5) Excessive or unreasonable absence from performance of duties; or

12 (6) Conviction of a felony or a crime involving moral turpitude.

13 2. In determining the professional competency of or efficiency of a
14 permanent teacher, consideration should be given to regular and special
15 evaluation reports prepared in accordance with the policy of the employing school
16 district and to any written standards of performance which may have been
17 adopted by the school board.

168.116. 1. The indefinite contract of a permanent teacher may not be

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

2 terminated by the board of education until after service upon the teacher of
3 written charges specifying with particularity the grounds alleged to exist for
4 termination of such contract, **notice of the option of the teacher to request**
5 **a preliminary hearing before an impartial hearing officer under section**
6 **168.117, notice of a hearing before the board on charges [and] under section**
7 **168.118, a hearing by the board of education on charges if requested by the**
8 **teacher, and a final decision by the school board.**

9 2. At least [thirty] **sixty** days before service of notice of charges of
10 incompetency, inefficiency, or insubordination in line of duty, the teacher shall
11 be given by the school board or the superintendent of schools warning in writing,
12 stating specifically the causes which, if not removed, may result in
13 charges. Thereafter, both the superintendent, or [his] **the superintendent's**
14 designated representative, and the teacher shall meet and confer in an effort to
15 resolve the matter.

16 3. Notice of **right to request a preliminary** hearing upon charges
17 **before an impartial hearing officer under section 168.117 or before the**
18 **school board**, together with a copy of charges, shall be served on the permanent
19 teacher at least twenty days prior to the **proposed** date of the hearing. The
20 notice and copy of the charges may be served upon the teacher by certified mail
21 with personal delivery addressed to [him] **the teacher** at [his] **the teacher's**
22 last known address. If the teacher or [his] **the teacher's** agent does not within
23 ten days after receipt of the notice request a **preliminary hearing before an**
24 **impartial hearing officer or a hearing before the school board** on the
25 charges, the board of education **of the school district** may, by a majority vote,
26 order the contract of the teacher terminated. If a **preliminary** hearing is
27 requested by either the teacher or the board of education, [it shall take place not
28 less than twenty nor more than thirty days after notice of a hearing has been
29 furnished the permanent teacher] **the superintendent shall forward a copy**
30 **of the notice to the labor and industrial relations commission. Within**
31 **five days after receiving this notice of hearing, the labor and industrial**
32 **relations commission shall provide a list of five prospective, impartial**
33 **hearing officers. Each person on the list shall be accredited by a**
34 **national arbitration organization. No one on the list shall be a resident**
35 **of the school district. Within seven days of receipt of the list, the board**
36 **of education of the school district and the teacher, or their legal**
37 **representatives, shall alternately strike one name from the list until**

38 only one name remains. The board of education of the school district
39 shall proceed first with the striking. The labor and industrial relations
40 commission shall promulgate uniform standards and rules of procedure
41 for such hearings. Such rules and regulations shall, at a minimum,
42 provide for:

43 (1) Discovery of names and addresses of persons who may be
44 called as expert witnesses at the hearing. The omission of any such
45 name shall result in a preclusion of the testimony of such witness in the
46 absence of the showing of good cause and the express permission of the
47 hearing officer;

48 (2) Written interrogatories; and

49 (3) The production of relevant documents.

50 4. Costs of the hearing shall include the reasonable and
51 customary per diem allowance for the hearing officer and the
52 reasonable and necessary expenses of the hearing officer.

53 [4.] 5. On the filing of charges in accordance with this section, the board
54 of education of the school district may suspend the teacher from active
55 performance of duty until a final decision is rendered by the board of education
56 but the teacher's salary and benefits shall be continued during such suspension,
57 provided that the teacher's salary and benefits may be suspended
58 following the board's receipt of an advisory opinion from the impartial
59 hearing officer finding in favor of dismissal of the teacher. If [a] an
60 advisory opinion to terminate a teacher's employment is reversed by
61 the board of education or a final decision to terminate a teacher's
62 employment by the board of education is appealed, and the decision is reversed,
63 the teacher shall be paid [his] the teacher's salary lost during the pending of
64 the [appeal] suspension of salary.

65 6. Any rule or portion of a rule, as that term is defined in section
66 536.010, RSMo, that is created under the authority delegated in this
67 section shall become effective only if it complies with and is subject to
68 all of the provisions of chapter 536, RSMo, and, if applicable, section
69 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable
70 and if any of the powers vested with the general assembly pursuant to
71 chapter 536, RSMo, to review, to delay the effective date, or to
72 disapprove and annul a rule are subsequently held unconstitutional,
73 then the grant of rulemaking authority and any rule proposed or
74 adopted after August 28, 2006, shall be invalid and void.

168.117. If a preliminary hearing is requested on the termination
2 of an indefinite contract by either the teacher or the school board, it
3 shall be conducted by the hearing officer in accordance with the
4 following provisions:

5 (1) The hearing shall be public unless closed at the request of the
6 teacher and shall be scheduled not less than thirty nor more than forty-
7 five days from the date of selection of the hearing officer, unless the
8 period is shortened or extended by mutual agreement of the teacher
9 and the board of education of the school district;

10 (2) Both the teacher and the person filing charges may be
11 represented by counsel, who may cross-examine witnesses;

12 (3) Testimony at hearings shall be on oath or affirmation
13 administered by the hearing officer, who for the purpose of hearings
14 held pursuant to this section shall have the authority to administer
15 oaths;

16 (4) The hearing officer shall have the power to subpoena
17 witnesses and documentary evidence as provided in section 536.077,
18 RSMo, and shall do so on the motion or at the request of the
19 administration or the teacher against whom charges have been
20 made. The hearing officer shall hear testimony of all witnesses named
21 by the administration and the teacher; however, the hearing officer
22 may limit the number of witnesses to be subpoenaed on behalf of the
23 administration or the teacher to not more than ten;

24 (5) The board of education of the school district shall employ a
25 stenographer who shall make a full record of the proceedings of the
26 hearings and who shall, within ten days after the conclusion thereof,
27 furnish the hearing officer, the board of education of the school
28 district, and the teacher, at no cost to the hearing officer or the
29 teacher, with a copy of the transcript of the record, which shall be
30 certified by the stenographer to be complete and correct. The
31 transcript shall not be open to public inspection, unless the hearing on
32 the termination of the contract was an open hearing or if an appeal
33 from the advisory opinion of the hearing officer is taken by the teacher;

34 (6) All costs of the hearing shall be paid by the school board of
35 education of the school district except the cost of counsel for the
36 teacher, except that if the teacher requests the preliminary hearing
37 without the concurrence of the board, and the hearing officer's opinion

38 recommends immediate dismissal of the teacher, then the teacher shall
39 pay the reasonable and necessary costs of the hearing other than the
40 cost of counsel for the school board;

41 (7) No later than thirty days after the conclusion of the hearing,
42 the hearing officer shall provide an advisory opinion as to whether or
43 not the teacher shall be dismissed and shall deliver copies of the
44 decision to both the teacher and the board of education of the school
45 district. The hearing officer shall also have the authority to make an
46 advisory opinion that a teacher shall be given appropriate discipline,
47 but not be dismissed. In the case of a charge of incompetency,
48 inefficiency, or insubordination in the line of duty, the hearing officer
49 also shall have the option of recommending an extension of the period
50 in which the superintendent and the teacher shall meet and confer in
51 an effort to resolve the matter as provided in subsection 2 of section
52 168.116.

168.118. 1. The board of education shall, in the same manner as
2 provided in section 168.116 and within thirty days of receipt of any
3 advisory opinion or recommendation from a hearing officer pursuant
4 to section 168.117, provide notice to the teacher of the board's intention
5 to accept or reject each relevant provision of such advisory opinion or
6 recommendation and of the opportunity for the teacher to request and
7 receive a hearing thereon before the board of education before a final
8 decision is made by the board.

9 2. If a board hearing is requested on the termination of an indefinite
10 contract it shall be conducted by the board of education and shall be conducted
11 in accordance with the following provisions:

12 (1) The hearing shall be public unless closed at the request of the
13 teacher, and shall be scheduled not less than thirty nor more than
14 forty-five days from the date of selection of the hearing officer, unless
15 the period is shortened or extended by mutual agreement of the teacher
16 and the board of education of the school district;

17 (2) Both the teacher and the person filing charges may be represented by
18 counsel who may cross-examine witnesses;

19 (3) Testimony at hearings shall be on oath or affirmation administered by
20 the president of the board of education, who for the purpose of hearings held
21 under sections 168.102 to 168.130 shall have the authority to administer oaths;

22 (4) The school board shall have the power to subpoena witnesses and

23 documentary evidence as provided in section 536.077, RSMo, and shall do so on
24 its own motion or at the request of the teacher against whom charges have been
25 made. **The complete record of the preliminary hearing and advisory**
26 **opinion or recommendation of the hearing officer, if a preliminary**
27 **hearing was conducted, shall be a part of the record of the board**
28 **hearing.** The school board shall hear testimony of all witnesses named by the
29 teacher; however, the school board may limit the number of witnesses to be
30 subpoenaed on behalf of the teacher to not more than ten;

31 (5) The board of education shall employ a stenographer who shall make
32 a full record of the proceedings of the hearings and who shall, within ten days
33 after the conclusion thereof, furnish the board of education and the teacher, at no
34 cost to the teacher, with a copy of the transcript of the record, which shall be
35 certified by the stenographer to be complete and correct. The transcript shall not
36 be open to public inspection, unless the hearing on the termination of the contract
37 was an open hearing or if an appeal from the decision of the board is taken by the
38 teacher;

39 (6) All costs of the hearing shall be paid by the school board except the
40 cost of counsel for the teacher;

41 (7) The decision of the board of education resulting in the demotion of a
42 permanent teacher or the termination of an indefinite contract shall be by a
43 majority vote of the members of the board of education and the decision shall be
44 made within seven days after the transcript is furnished them. A written copy
45 of the decision shall be furnished the teacher within three days thereafter.

168.120. 1. The teacher shall have the right to appeal from the **final**
2 decision of the board of education to the circuit court of the county where the
3 employing school district is located. The appeal shall be taken within fifteen days
4 after service of a copy of the **final** decision of the board of education upon the
5 teacher, and if an appeal is not taken within the time, then the **final** decision of
6 the board of education shall become final.

7 2. The appeal may be taken by filing notice of appeal with the board of
8 education, whereupon the board of education, under its certificate, shall forward
9 to the court all documents and papers on file in the matter, together with a
10 transcript of the evidence, the findings and the **final** decision of the board of
11 education, which shall thereupon become the record of the cause. Such appeal
12 shall be heard as provided in chapter 536, RSMo.

13 3. Appeals from the circuit court shall be allowed in the same manner as

14 in civil actions, except that the original transcript prepared and filed in the
15 circuit court by the board of education, together with a transcript of the
16 proceedings had in the circuit court, shall constitute the transcript on appeal in
17 the appellate court. The board of education shall make available, to the parties,
18 copies of any transcript prepared and filed by it in the circuit court and upon
19 final determination of the cause in the appellate court the original record of the
20 board of education filed as a part of the transcript on appeal shall be certified
21 back to the board of education by the appellate court. In all appeals from the
22 board of education or circuit court the costs thereof shall be assessed against the
23 losing party as provided by law in civil cases. All appeals to the circuit court and
24 appellate courts shall have precedence over all cases except election contests.

25 4. If the circuit court finds for the teacher, [he] **the teacher** shall be
26 restored to permanent teacher status and shall receive compensation for the
27 period during which [he] **the teacher** may have been suspended from work, and
28 such other relief as may be granted by the court.

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Bill

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